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No. 994

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

SHIRELEY JEAN ESTES; LISHA DAWN ESTES; SHAWNA ANNETTE ESTES AND DAVID LAIRD ESTES,

Petitioners,

vs.

CAMDEN FIRE INSURANCE ASSOCIATION OF GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION LIMITED; STATE AUTOMOBILE MUTUAL INSURANCE COMPANY; FRANK M. GUSWEILER; STATE OF OHIO AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT JAMES A. RHODES GOVERNOR, STATE OF OHIO IN OPPOSITION

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JURISDICTION

Petitioner has mistaken the statutory ground upon which jurisdiction may be invoked in that 28 U.S. Code, Section 1257 (3) specifically refers to review of judgments rendered

by the highest court of a state. Review by writ of certiorari of cases in the Courts of Appeals is provided in 28 U.S. Code, Section 1254 (1).

QUESTION PRESENTED

Does dismissal by the District Court of petitioner's complaint against respondent, James A. Rhodes, Governor of the State of Ohio present a proper question for review by this Court?

STATEMENT OF THE CASE

On April 20, 1966 Petitioners filed a lengthy complaint in the United States District Court for the Southern District of Ohio, Western Division. Named as one of five parties-defendant was Respondent James A. Rhodes, Governor of the State of Ohio. (Pet. for Cert. p. 4-23). Statutory jurisdiction was claimed to exist pursuant to 42 U.S. Code Section 1983. Throughout the complaint numerous allegations were made relating to the enactment and operation of laws by and in the State of Ohio pertaining to the liability and casualty insurance business. According to the various allegations, these laws of the State of Ohio, primarily Title 39 Revised Code of Ohio, are unconstitutional because they violate the Fourteenth Amendment and permit violation of the Civil Rights Act of 1871 specifically 42 U.S. Code Section 1983. (Pet. for Cert. App. A) These laws are alleged to violate Petitioners' federal rights in the following respects; by inhibiting the right to contract freely, in that they permit the infliction of cruel and inhuman punishment, and that they encourage taxation without representation.

The District Court, upon motions filed and heard, dismissed the complaint on the ground that it failed to state a claim upon which relief could be granted. (Pet. for Cert.

App. B) The United States Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court. (Pet. for Cert. App C)

Petitioners now seek review by the Supreme Court of the United States on writ of certiorari which Respondent opposes herein.

ARGUMENT

A. No Conflict of Authority

Petitioners have not cited any authority or even argued that the decision they seek to have reviewed is in conflict with any decision of another Court of Appeals or this Court on the same matter.

Neither have Petitioners argued that an important state question has been decided in a way which is inconsistent or in conflict with applicable state law.

B. No Important Issues for Consideration

The only issue in the case is whether Petitioners' complaint stated a claim upon which relief could be granted. The District Court and the Circuit Court of Appeals determined that it did not. However, such determination was obviously based upon fatal deficiencies of the complaint itself and not because the acts alleged were also in clear violation of state or local law as in *Monroe* v. *Pape*, 365 U.S. 167, 5 L. Ed. 2d 492, 81 Supreme Court 473.

In the instant case no actionable mischief or misconduct is even alleged which could be attributed to Respondent. The compaint consists primarily of scurrilous charges and conclusions. The determination that such allegations failed to state a claim simply cannot be ballooned by Petitioners into a substantial, novel or important question of great public moment worthy of this Court's consideration on review.

C. **There Is No Need to Invoke The Court's Power of Supervision**

A cursory reading of the complaint and the decision of the District Court compels the conclusion that dismissal and the subsequent affirmance was proper. Even though the District Court did comment on charges made by Petitioners in various memoranda, it would not appear under the circumstances that this constitutes a substantial departure from the usual and accepted course of judicial proceedings.

The District Judge also concluded that "this entire action represents the personal vendetta of counsel for the plaintiffs against the insurance industry in general and against the named defendant companies in particular, and against the defendant Common Pleas Judge, rather than a sincere and bona fide attempt to recover monetary damages for plaintiffs." (Pet. for Cert. p. 36). That this clearly is an accurate assessment of the situation is evidenced by the complaint and corroborated by petitioners' statements in the "Reasons for Granting the Writ.". (Pet. for Cert. p. 4-29)

Undoubtedly there has been a departure from the accepted and usual course of judicial proceedings but such is attributable to Petitioners and not to the District Court, the Circuit Court or any of the Respondents.

D. **The Suit Is Actually One Against The State of Ohio and Was Properly Dismissed**

With regard to this Respondent there is an additional reason why the writ should be denied. The allegations against the named Respondent are actually directed against State of Ohio which is not subject to suit. The doctrine that states and its agencies are not subject to suit has often been applied by Federal Courts in actions under the Civil Rights Act, particularly 42 U.S. Code, Section 1983 where

it is consistently held that a state or municipality is not a "person" within the ambit of Section 1983. *Monroe* v. *Pape*, 365 U.S. 167 (1961), *Sires* v. *Cole*, (9th Cir. 1963), 320 F 2d 877, *Hewitt* v. *City of Jacksonville*, 188 F 2d 423, (5th Cir. 1951) cert. denied 342 U.S. 835, *Clark* v. *State of Washington*, 366 F 2d 678 (9th Cir. 1966), *Williford* v. *People of California*, 352 F 2d 474 (9th Cir. 1967).

CONCLUSION

Because Petitioners have shown no special or important reasons for granting the writ, Respondent submits that the Petition for Certiorari should be denied.

Respectfully submitted,

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